

TABLE OF CONTENTS

	PAGE
EXECUTIVE SUMMARY Click Here To View	i
<i>RECOMMENDATION</i>	ii
INTRODUCTION	1
SCOPE AND METHODOLOGY	2
BACKGROUND	3
FINDING I	
THE CITY CAN COLLECT AN ESTIMATED \$579,000	
IN TRANSIENT OCCUPANCY TAXES BY REQUIRING	
APARTMENT COMPLEXES OPERATING WITHIN THE DEFINITION	
OF THE CITY'S TRANSIENT OCCUPANCY TAX ORDINANCE	
TO FILE TRANSIENT OCCUPANCY TAX RETURNS	4
<i>The Requirement To Collect TOTs</i>	4
<i>The Apartment Complex We Audited Did Not Collect TOTs</i>	5
<i>We Estimate That The City Did Not Collect From This Apartment Complex</i> <i>Alone Approximately \$171,000 In TOTs During The Past Three Years</i>	6
<i>Other Apartment Complexes Have Not Filed TOT Returns,</i> <i>Resulting In An Estimated \$408,000 In TOT Revenues</i> <i>That The City Could Collect</i>	7
TABLE I	
<i>Estimated Transient Occupancy Taxes From Apartment Complexes</i>	7
CONCLUSION	8
RECOMMENDATION	9
ADMINISTRATION'S RESPONSE Click Here To View	10

APPENDIX A

[Click Here To View](#)

DEFINITIONS OF PRIORITY 1, 2, AND 3

AUDIT RECOMMENDATIONSA-1

APPENDIX B

[Click Here To View](#)

SAN JOSE CODEB-1

INTRODUCTION

In accordance with the City Auditor's 1992-93 Audit Workplan, we have initiated an audit of the City's transient occupancy tax revenues. We conducted this audit in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Scope and Methodology section of this report.

SCOPE AND METHODOLOGY

This is the first report on our audit of the city of San Jose's (City) transient occupancy tax (TOT) revenues. Our objectives were

- To determine whether establishments which are covered by the TOT Ordinance are collecting and remitting the TOTs and
- To identify steps the City can take to improve its collection of TOT revenues.

This interim report discusses our findings relating to the occupancy records of an apartment complex in San Jose. Our audit included tests of tenant files and rentals database. We also surveyed other apartment complexes in the City to determine how many units are potentially subject to the TOT Ordinance but are not currently filing TOT returns.

BACKGROUND

The Transient Occupancy Tax (TOT) Ordinance (Appendix B) imposes a tax on transients for the privilege of occupancy in any hotel in the city of San Jose (City). "**Hotel**" is defined by the Ordinance as ". . . *any structure situated in the city, including, but not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, guesthouse, bed and breakfast inn, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof situated in the city, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes.*" "**Transient**" is defined as "*A person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days.*"

The TOT is 10 percent of rents paid and is comprised of two taxes: a 4 percent general tax that goes to the City's General Fund and a 6 percent special tax that is used to fund the City's Convention and Visitors Bureau, Cultural Grant and the Fine Arts Program.

The Finance Department/Treasury Division administers the collection of the TOTs. The City collected approximately \$7,220,000 in TOTs in 1991-92 and \$3,572,000 during the first six months of 1992-93.

FINDING I

THE CITY CAN COLLECT AN ESTIMATED \$579,000 IN TRANSIENT OCCUPANCY TAXES BY REQUIRING APARTMENT COMPLEXES OPERATING WITHIN THE DEFINITION OF THE CITY'S TRANSIENT OCCUPANCY TAX ORDINANCE TO FILE TRANSIENT OCCUPANCY TAX RETURNS

The city of San Jose's (City) Transient Occupancy Tax (TOT) Ordinance requires hotel or apartment operators to collect the TOTs, prepare a tax return, and transmit the tax return with the amounts collected to the City's Director of Finance. Our review revealed that

- The occupancy records of a 1,700-unit apartment complex in San Jose indicated that the apartment complex had not been collecting the TOTs that it should have collected from tenants whose stays were for 30 days or less. As a result, we estimate that the City could recover from this apartment complex alone approximately \$171,000 in TOTs for rents paid during the past three years.
- An additional 15 other apartment complexes in San Jose, with a total of about 4,000 apartment units, that should have filed TOT returns have not done so. As a result, we estimate that the City could collect from these apartment complexes approximately \$408,000 in TOTs for rents paid during the past three years.

To improve its collection of TOTs, the City should (1) require those apartment complexes operating within the definition of the City's TOT Ordinance to file TOT returns for the past three years and (2) assess TOTs, interest, and/or penalties due from these establishments.

The Requirement To Collect TOTs

The City's TOT Ordinance requires hotel or apartment operators to collect the TOTs, prepare a tax return, and transmit the tax return with the amounts

collected to the City's Director of Finance. The hotel or apartment operator is responsible for collecting the TOTs at the time the rent is collected from every transient. At the end of each quarter, the hotel operator is also required to prepare a tax return and remit the TOTs to the Director of Finance. According to the TOT Ordinance, *"If any operator fails or refuses to collect said tax and to make any report and remittance of said tax . . . , the director of finance shall proceed . . . to determine and assess against such operator the tax, interest and penalties provided for by this chapter."*

The Apartment Complex We Audited Did Not Collect TOTs

We reviewed the occupancy records of a 1,700-unit apartment complex operating in San Jose. Our review indicated that this apartment complex has provided transient occupancy facilities and services for which it should have collected TOTs and filed TOT returns during the past three years but did not do so.

The apartment complex staff provided us with computer printouts listing the tenants who moved out of the apartment complex in 1992. The lists also showed the dates the same tenants moved into their apartments. By comparing the move-in and move-out dates, we were able to determine the occupancies that were for 30 days or less. Our analysis indicated that 479 from a total of 2,892 move-outs showed stays that were for 30 days or less.

**We Estimate That The City Did Not Collect
From This Apartment Complex Alone
Approximately \$171,000 In TOTs During The Past Three Years**

Of the 479 tenants whose stays were 30 days or less, we reviewed the occupancy records of 87 tenants and found that the average payment (including rent, utilities, linen, and administration charges) was \$1,190.¹ Using this average payment, we estimate that the payments of the 479 tenants totaled approximately \$570,000. At 10 percent, TOT revenues would be \$57,000 on this \$570,000 in rents. By further extrapolating this over three years, we estimate that approximately \$171,000 in TOTs that should have been remitted to the City were not remitted.

In our opinion, the City can collect back TOTs for at least three years based on the City Treasury Division's practice of assessing taxes for the three prior years when collecting delinquent taxes. Furthermore, the recordkeeping requirements in the TOT Ordinance section 4.74.090 states, "*It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep, and preserve for a period of three years, all records as may be deemed necessary by the city to determine the amount of such tax as he may have been liable for the collection of and the payment of to the city. The city shall have the right to inspect such records at all reasonable times.*"

¹ This average excludes any deposits that prospective tenants may have paid but forfeited because they did not move into the apartments they reserved. Such forfeited deposits are also subject to the TOT because they are payments for the right to use the apartment.

**Other Apartment Complexes Have Not Filed TOT Returns,
Resulting In An Estimated \$408,000
In TOT Revenues That The City Could Collect**

Through a telephone survey, we identified 15 other apartment complexes in the City with 100 or more apartment units that rent apartments on a month-to-month basis. According to the Finance Department/Treasury Division, none of the 15 apartments filed TOT returns in 1992. There are about 4,000 apartment units in these 15 apartment complexes. By applying the rate of potential TOTs per apartment unit that we computed for the 1,700-unit apartment complex we audited, we estimate that the City could generate \$136,000 annually from these 15 apartment complexes.² If the City pursued the back TOTs that these establishments may owe, we estimate that the City could collect \$408,000 in TOTs for the past three years.

Table I shows how we computed our estimates.

TABLE I
ESTIMATED TRANSIENT OCCUPANCY TAXES
FROM APARTMENT COMPLEXES

	Apartment A	Other 15 Apartments	Total
Number of units	1,700	4,000	5,700
Estimated average TOT/unit*	\$34	\$34	\$34
Estimated unpaid TOTs			
<i>One year</i>	\$ 57,000	\$136,000	\$193,000
<i>Three years</i>	\$171,000	\$408,000	\$579,000
* In comparison, the 25 largest hotels in San Jose generate \$1,340 in TOTs per unit annually			

² Our estimate assumes the same conditions in these 15 apartment complexes as in the 1,700-unit apartment complex we audited. The actual amount of TOTs from these 15 apartment complexes will depend on the extent of transient occupancy business they conduct.

To improve its collection of TOTs, the City should (1) require those apartment complexes operating within the definition of the City's TOT Ordinance to file TOT returns for the past three years and (2) assess the past TOTs along with the interest and/or penalties due from these establishments.

CONCLUSION

Our review of the occupancy records of a 1,700-unit apartment complex in San Jose indicated that the apartment complex had not collected the TOTs that it should have collected from tenants whose stays were for 30 days or less. As a result, we estimate that the City could recover from this apartment complex alone approximately \$171,000 in TOTs for the past three years.

We also identified 15 other apartment complexes with a total of about 4,000 apartment units that have not filed TOT returns. As a result, we estimate that the City could collect from these apartment complexes approximately \$408,000 in TOTs for the past three years.

To improve its collection of TOTs, the City should (1) require those apartment complexes operating within the definition of the City's TOT Ordinance to file TOT returns for the past three years and (2) assess the past TOTs along with interest and/or penalties due from these establishments.

RECOMMENDATION

We recommend that the Finance Department/Treasury Division:

Recommendation #1:

Improve the collection of transient occupancy tax (TOT) revenues by

- (a) Requiring those apartment complexes operating within the definition of the City's TOT Ordinance to file TOT returns for the past three years and
- (b) Assessing past TOTs along with interest and/or penalties due from these establishments. (Priority 1)

[Click On The Appropriate Box To View Item](#)

